

**United States District Court**  
**EASTERN DISTRICT OF TEXAS**  
**SHERMAN DIVISION**

UNITED STATES OF AMERICA

§

V.

§

CASE NO. 4:20cr212

Judge Mazzant

DEBRA LYNN MERCER-ERWIN (1)

§

KAYLEIGH MOFFETT (2)

§

**ORDER**

Pending before the Court is Defendant Debra Lynn Mercer-Erwin's Motion for Pretrial Hearing to Determine Admissibility of Co-Conspirator Statements (Dkt. #317). Defendant Kayleigh Moffett filed a motion to join in the motion (Dkt. #319). The Government filed a response to the request for a pretrial hearing (Dkt. #320). Having considered the motion, and the Government's response, the Court is of the opinion that such motion should be denied.

Defendants requests that the Court hold a hearing to determine the admissibility of any and all statements by co-conspirators that the Government intends to introduce as evidence in the case.

In order for co-conspirator statements to be admissible, the Government must show the following: (1) that there was a conspiracy; (2) that the statement must be made during the course and furtherance of the conspiracy; and (3) the declarant and the defendant must be members of the conspiracy. *United States v. James*, 590 F.2d 575, 578 (5th Cir. 1979). The Court's determination of admissibility is normally made during the presentation of the government's case-in-chief. *United States v. Fragoso*, 978 F.2d 896, 899 (5th Cir. 1992).

The determination whether co-conspirator statements should be admissible should be made by the Court at the time of trial during the presentation of the Government's case-in-chief. Defendants offers no extraordinary reason why this hearing should be conducted prior to trial. Therefore, this request should be denied. See *United States v. Roberts*, No. 4:20-cr-314, 2022 WL

17834053, at \*5 (E.D. Tex. Dec. 21, 2022).

It is therefore **ORDERED** that Defendant Kayleigh Moffett's Second Motion to Join Defendant Debra Lynn Mercer-Erwin's Motion for Pretrial Hearing to Determine Admissibility of Co-Conspirator Statements (Dkt. #319) is hereby **GRANTED**.

It is further **ORDERED** that Defendant Debra Lynn Mercer-Erwin's Motion for Pretrial Hearing to Determine Admissibility of Co-Conspirator Statements (Dkt. #317) is hereby **DENIED**.

**SIGNED** this 14th day of March, 2023.

  
AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE